

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-1304

B  
P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

FRANK EVANS,

Defendant-Appellant  
-----

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75-1304

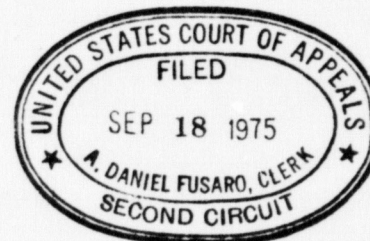
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APPENDIX FOR APPELLANT  
\_\_\_\_\_

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PAGINATION AS IN ORIGINAL COPY

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INDICTMENT 75 CR.176

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA :

-v- :

FRANK EVANS, a/k/a "Frederick  
Paseka," :

Defendant. :

- - - - -x

INDICTMENT

75 Cr. 176

The Grand Jury charges:

On or about the 9th day of October, 1974, in the Southern District of New York, FRANK EVANS, a/k/a "Frederick Paseka," the defendant, unlawfully, wilfully and knowingly did receive, possess, conceal, store and dispose of money and property, to wit, American Express Travelers Cheques in an approximate amount in excess of \$5,000, which had been taken and carried away with intent to steal and purloin while belonging to and in the care, custody, management and control of the First National Bank and Trust Company, Newtown-Yardley Road, Newton, Pennsylvania, the deposits of which were then insured by the Federal Deposit Insurance Corporation, knowing the same to have been so taken.

(Title 18, United States Code, Section 2113(c).)

FOREMAN

PAUL J. CURRAN  
United States Attorney

INDICTMENT 75 CR. 562



RJH:wp

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

75 CRIM. 562

UNITED STATES OF AMERICA

- v -

FRANK EVANS, a/k/a "Frederick  
Paseka,"

Defendant.

INDICTMENT

S. 75 Cr.



The Grand Jury charges:

During and about the month of October, 1974, in the Southern District of New York, FRANK EVANS, a/k/a "Frederick Paseka," unlawfully, wilfully and knowingly did receive, conceal, store, sell and dispose of securities, to wit, American Express Travelers Cheques, of a value in excess of \$5,000, which were moving as, which were a part of, and which constituted interstate commerce from the State of Pennsylvania to the State of New York, knowing the same to have been stolen, unlawfully converted and taken.

(Title 18, United States Code, Section 2315.)

Carol E. Schuler  
FOREMAN

Paul J. Curran  
PAUL J. CURRAN  
United States Attorney

**United States District Court**

**SOUTHERN DISTRICT OF NEW YORK**

**THE UNITED STATES OF AMERICA**

**vs.**

**FRANK EVANS, a/k/a "Frederick  
Paseka,"**

**Defendant.**

**INDICTMENT**

**S. 75 Cr.**

**(18 U.S.C. § 2315.)**

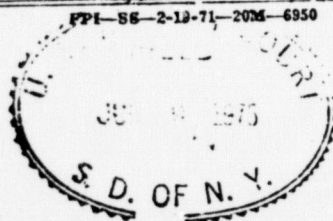
**PAUL J. CURRAN**

*United States Attorney.*

**A TRUE BILL**

*Carol L. Schelin*

*Foreman.*



**JUN 19 1975**

*Def. present (city court) (not present)  
not guilty. Sent of 5000. P.B. prison indet. # 250176  
to court this indet. Trial Aug 12, 1975 10:15 A.M.  
w/pt. J.  
R*



DOCKET ENTRIES

**JUDGE WRIGHT**

D. C. Form No. 100 Rev.

(01)	STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
	J.S. 2 mailed	Clerk	5/1/75	Subin	5-	
	J.S. 3 mailed	Marshal	5/12/75	Heas		5-
	Violation	Docket fee				
	Title 18					
	Sec. 2315					
	Possess. of stolen securities.					
	( One Count)					

DATE	PROCEEDINGS
6-9-75	Filed indictment. (Superseding 75 Cr 176)
6-19-75	Deft. present (atty present Alvin Geller Esq.) deft. pleads not guilty. Bail of \$5,000 P.R.B. fixed on Indict. #75 Cr. 176 to cover this indict. Trial Aug. 12, 1975 10:15 A.M., , , , , Wyatt, J.
7-23-75	Filed deft's. affidavit & notice of motion to dismiss the indictment. (Filed in 75 Cr., 176).
7-23-75	Filed deft's. memorandum of law in support of motion to dismiss. (Filed in 75 Cr., 176).
8-6-75	Filed transcript of record of proceedings dated 6-19-75. (Filed in 75 Cr, 176)
8-11-75	Filed Govt's. affidavit in opposition to deft's. motion to dismiss the indictment
8-11-75	Filed Govt's. memorandum of law in opposition to deft's. motion to dismiss.



DATE	PROCEEDINGS
8-11-75	Trial adjourned to Aug. 12, 1975.....Wyatt, J.
8-12-75	Trial adjourned to Oct. 28, 1975.....Wyatt, J.
8-12-75	Filed ORDER that the deft. be examined by Dr. Arthur Dadirrian to determine the state of his present health. The U.S. Attorney is to pay Dr. Dadirrian a reasonable fee for his services not to exceed \$250.00.....Wyatt, J.
8-12-75	Filed MEMO ENDORSED on deft's. motion filed 7-23-75. Motion denied.....Wyatt, J. (mailed notice) (Filed in 75 Cr. 176)
8-11-75	Filed deft's. notice of appeal from the Order of Judge Wyatt denying deft's. motion to dismiss the indictment. Mailed notice to Frank Evans, c/o Rubin, Gold & Geller 299 B'way., N.Y.C. 10007 and U.S. Attorney's Office.
8-20-75	Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.
8-21-75	Filed Medical Report of Dr. Arthur N. Dadirrian.
8-28-75	Filed transcript of record of proceedings dated 8-11-75.
9-2-75	Filed notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A.
9-2-75	Filed stipulation transmitting true copies of originally filed documents, which are presently missing, to the U.S.C.A.
8-28-75	Filed notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A.

75 CRIM. 176

D. C. Form No. 100 Rev.

[illegible]

(01)	STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
	J.S. 2 mailed	Clerk				
	J.S. 3 mailed ✓	Marshal				
	Violation	Docket fee				
	Title 18					
	Sec. 2113(c)					
	Possess. of stolen property.					
	( One Count)					

DATE	PROCEEDINGS
2-21-75	Filed indictment.
3-3-75	Deft. present (no Atty.) Court directs a plea of not guilty be entered. 10 days for motions. Bail previously fixed by the Magistrate at \$5,000 P.R.B. continued. Lasker, J. Case assigned to Wyatt, J. for all purposes.
3-10-75	Pre-Trial conference held. (atty. present) Trial April 21, 1975..... Wyatt, J.
3-19-75	Filed deft's, affidavit & notice of motion for suppression of evidence.
4-11-75	Deft. not present. Attorney Irving Cohen present. Suppression hearing held, .....Wyatt, J.
4-14-75	Filed MEMO ENDORSED on deft's, motion filed 3-19-75. After hearing in open Court, the motion is denied. SO ORDERED.....Wyatt, J. (mailed notice)
5-1-75	Deft. (Atty. Present) withdraws his plea of not guilty and pleads guilty. Sentence June 20, 1975 2:30 P.M. Pre Sent. Investigation Ordered. Bail Cont'd. Wyatt J.



DATE	PROCEEDINGS
6-19-75	Deft, & atty. Alvin Geller present. Court sets aside the guilty plea and directs the entry of a not guilty plea. (see indict #75Cr.562).....Wyatt, J.
7-23-75	Filed deft's, affidavit & notice of motion to dismiss the indictment.
7-23-75	Filed deft's. memorandum of law in support of motion to dismiss.
8-6-75	Filed transcript of record of proceedings dated 6-19-75.
8-11-75	Filed Nolle Prosequi.....Wyatt, J.
8-12-75	Filed MEMO ENDORSED on deft's. motion filed 7-23-75. Motion denied.....Wyatt, J. (mailed notice)
<del>8-29-75</del> 8-29-75	Filed transcript of record of proceedings dtd: Apr. 11-75.

MINUTES OF MAY 1, 1975



1 MP

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA :

6 versus :

7 FRANK EVANS a/k/a :

8 FREDERICK PASEKA, :

9 Defendant. :

9 -----X

10

11

New York, N. Y.

12

May 1, 1975 - 9:30 a.m.

13

Before

14

HON. INZER B. WYATT,

15

District Judge

16

17 APPEARANCES:

18

PAUL J. CURRAN, Esq.,  
United States Attorney for the Southern District  
of New York

19

20

RICHARD J. HOSKINS, Esq.,  
Assistant United States Attorney

21

ALVIN GELLER, Esq.,  
Attorney for Defendant

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MP

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2

THE CLERK: United States of America against Frank

3

Evans, also known as Frederick Paseka.

4

Are both sides present?

5

MR. HOSKINS: Government is ready.

6

MR. GELLER: Defendant is ready now, your Honor.

7

THE COURT: Mr. Evans, what sort of shape are you in

8

this morning?

9

THE DEFENDANT: I'll box anyone, your Honor.

10

THE COURT: Well, I am glad to hear it, and I am

11

glad there was nothing untoward yesterday.

12

MR. GELLER: We are prepared to proceed, your Honor.

13

THE COURT: All right. What is the application, Mr.

14

Geller?

15

MR. GELLER: Your Honor, at this time, Mr. Frank

16

Evans offers to withdraw his plea of not guilty previously

17

entered and offers to plead guilty to the one and only one

18

count of this indictment.

19

THE COURT: All right. Mr. Clerk, would you take

20

the plea?

21

THE CLERK: Are you Frank Evans?

22

THE DEFENDANT: Yes.

23

THE CLERK: On Indictment 75 Criminal 176, filed

24

February 21, 1975, the grand jury charges, on or about the

25

9th day of October 1974, in the Southern District of New York,



1 MP

3

2 Frank Evans, also known as Frederick Paseka, the defendant,  
3 unlawfully, wilfully and knowingly did receive, possess, con-  
4 ceal, store and dispose of money and property, to wit,  
5 American Express Travelers Checks in the approximate amount of  
6 in excess of \$5,000, which had been taken and carried away  
7 with intent to steal and purloin while belonging to and in the  
8 care, custody, management and control of the First National  
9 Bank & Trust Company, Newtown and Yardley Road, Newtown,  
10 Pennsylvania, the deposits of which were then insured by the  
11 Federal Deposit Insurance Corporation, knowing the same to  
12 have been so taken.

13 At this time, do you wish to withdraw your plea of  
14 not guilty and plead guilty to this indictment?

15 THE DEFENDANT: Yes.

16 THE COURT: What is the answer?

17 THE DEFENDANT: I am sorry. Yes. Guilty.

18 BY THE COURT:

19 Q Mr. Evans, before accepting this plea of guilty, I  
20 have to ask you a few questions.

21 A Yes, sir.

22 Q Now, the reason for my asking these questions is so  
23 that we can be satisfied that when you come here this morning  
24 and plead guilty you do so knowing and understanding what the  
25 charge is against you, understanding what the consequences of

2 pleading guilty are, and also that you are pleading guilty of  
3 your own free will, voluntarily, and because you believe you  
4 are in fact guilty.

5 Do you understand?

6 A Yes, sir.

7 THE COURT: What is your name, Madam?

8 MRS. EVANS: I am Mrs. Evans.

9 THE COURT: Would it be more comfortable for you if  
10 you took a seat?

11 Thank you, Mrs. Evans.

12 Q Now, Mr. Evans, what does it mean to you in this  
13 charge that you are also known as Frederick Paseka? Is that  
14 a name that you use occasionally?

15 A Yes. Just for the one occasion, your Honor.

16 Q Really in connection with the incident which gave  
17 rise to this charge?

18 A Yes.

19 Q You used the name Frank Paseka?

20 A That's just the one.

21 Q Now, first, you understand, putting it in simpler  
22 language than is used in this indictment, this charges that  
23 you received and had in your possession some American Express  
24 Travelers Cheques amounting to more than five thousand dollars  
25 in face value and that these Travelers Cheques had been stolen



2 from a bank, the First National Bank in Newton, Pennsylvania,  
3 and that you knew when you received them or had them in your  
4 possession that they had been stolen.

5 Now, do you understand what the charge is?

6 A Yes, your Honor.

7 Q Now, remember, Mr. Evans, that I don't know anything  
8 about the facts, so I will have to ask you to tell me in your  
9 own words what you did which causes you to come here and  
10 plead guilty.

11 A As you said, your Honor, I knew that the checks were  
12 stolen, and I made a name out, and I proceeded to cash them,  
13 and there was somewhere around five or six thousand dollars.

14 Q In American Express Travelers Cheques?

15 A Yes. Various banks cashed them.

16 Q So do I understand from what you are now telling  
17 me that in some way you got hold of American Express Travelers  
18 Cheques and that you attempted to cash them?

19 A Yes.

20 Q And that when you received them and when you had them  
21 in your possession, you knew that they had been stolen from a  
22 bank?

23 A No. I didn't know that.

24 Q You didn't know that they had been stolen?

25 A I knew that they were stolen, but not from a bank.

1 MP

6

2 Q You knew that they were stolen, but you didn't know  
3 from where they had been stolen?

4 A That's right.

5 Q I understand. So it's fair to say, is it, that you  
6 wilfully, in the sense of knowingly --

7 A Yes.

8 Q -- had in your possession about five thousand dollars'  
9 worth of American Express Travelers Cheques, which you knew  
10 had been stolen; is that correct?

11 A Yes.

12 Q So is it fair to say that you are pleading guilty  
13 here because you believe you are in fact guilty?

14 A Yes, your Honor.

15 THE COURT: Now, I take it the Government has  
16 proof that the Travelers Cheques which Mr. Evans had were in  
17 fact stolen from the First National Bank of Newton, Pennsyl-  
18 vania?

19 MR. HOSKINS: Yes, your Honor. That's correct.

20 THE COURT: And that that national bank has its  
21 deposits insured by the Federal Deposit Insurance Corporation?

22 MR. HOSKINS: That's correct; and did in October of  
23 1974.

24 Q Now, Mr. Evans, do you realize that when you plead  
25 guilty you give up your right to have a jury of twelve men and



2 women determine whether you are guilty or not guilty?

3 A Yes, sir.

4 Q And do you realize that after your plea of guilty  
5 is accepted, all that remains is the imposition of sentence?

6 A Yes, your Honor.

7 Q And while no one can say this morning what the sen-  
8 tence would be, because we need to have a pre-sentence report  
9 to tell us something about you and your background and some-  
10 thing more about the offense, do you realize that the sentence  
11 could be, under the law, a fine of up to five thousand dollars,  
12 imprisonment for up to ten years or both?

13 A I didn't realize that, but I'm guilty.

14 Q Well, when I tell you that that is what the law  
15 says, do you understand what I am telling you?

16 A Yes; I understand.

17 Q The law says that for this offense to which you  
18 are pleading guilty there may be a fine of not more than five  
19 thousand dollars, imprisonment for not more than ten years or  
20 both. Do you understand now?

21 A Yes, your Honor.

22 Q And have you been able to discuss with your lawyer,  
23 Mr. Geller, pleading guilty to this charge?

24 A Yes, your Honor.

25 Q Mr. Geller, who is here in court this morning?

2 A Yes, your Honor.

3 Q Has anybody made any promises to you as to what the  
4 sentence would be to cause you to plead guilty?

5 A No, your Honor.

6 Q Or any other kind of promises?

7 A No, your Honor.

8 Q Has anybody made any threats against you to cause  
9 you to plead guilty?

10 A No, your Honor.

11 THE COURT: Now, I think the record should show that  
12 Mr. Evans is here in court this morning in a wheel chair,  
13 but of course I trust that that is a temporary condition.

14 Q At any rate, you told me that you felt able to box  
15 when you first came in; is that right?

16 A Yes.

17 Q I just want to be sure that you are in sufficiently  
18 good health, mentally and physically, this morning to know  
19 what you are doing. Do you understand?

20 A Yes.

21 Q And are you in sufficient good health this morning,  
22 mentally and physically, to know what you are doing here?

23 A I assume I am.

24 Q Well, tell me more about it, because I want to know  
25 more about it.



2 A Well, I have been very ill for a little over two and  
3 a half years, your Honor. I have had major surgery, which the  
4 doctors say if I didn't have it for five days more, I would be  
5 dead. I have had what they call diverticulitis. It's not an  
6 unusual --

7 Q No, but it is not usually fatal.

8 A Well, the doctors said it would have been.

9 Q My wife had it four or five years ago. In fact, it  
10 used to be considered a fashionable disease.

11 A Well, forty or fifty per cent of us get it after  
12 forty. I had a perforation, the infectious kind. Four or  
13 five feet of my small intestine and part of my colon was  
14 removed. I was about 180 pounds before, and I am down to  
15 130 now, and I have a malabsorption problem, and last year,  
16 from stool checks, I was losing thirteen grams of fat per  
17 bowel movement, which normally is four grams.

18 I just come out of Columbia Presbyterian Hospital.  
19 I am now losing twenty-three grams, and it's progressing, and  
20 fifty grams, they tell me, is the critical thing. As you go  
21 along like this, you get weaker, you understand.

22 I have days where I can't get out of bed or lift my  
23 head. I have days where I can function for a few hours a  
24 day, and I haven't had a good day, really, your Honor, since  
25 this operation.

2 Q Well, I am sorry to hear that, but this morning you  
3 feel well enough to understand what's happening, do you?

4 A My mind is there, your Honor, yes.

5 Q Well, that's the important thing.

6 A Yes.

7 Q That is all I am interested in for this purpose,  
8 that you understand what is happening.

9 A Yes.

10 THE COURT: I should say -- and I think Mr. Geller  
11 and the assistant United States Attorney will agree with me --  
12 that Mr. Evans has been perfectly responsive and intelligent  
13 and seemingly aware.

14 Q That is the only reason why I am asking you these  
15 questions.

16 A Yes, your Honor.

17 Q And, Mr. Evans, I always ask this question: do you  
18 use drugs?

19 A No, your Honor.

20 Q The reason I ask you is simply to be sure that a  
21 person who comes in and pleads guilty is not under the influence  
22 of drugs when he pleads guilty.

23 A I understand, your Honor.

24 THE COURT: All right. I will accept Mr. Evans'  
25 plea of guilty.



2 Mr. Clerk, what is an appropriate date for sentence?

3 THE CLERK: June 13th is six weeks, your Honor.

4 THE COURT: All right. And where will we be?

5 THE CLERK: 518.

6 THE COURT: Mr. Evans, as I indicated a moment ago,  
7 we don't impose sentence immediately. We wait, and the reason  
8 we wait is so that from the probation officers we can get a  
9 report which tells us something about you and your background  
10 that will help to arrive at as fair and reasonable and just  
11 a sentence as in this human existence is possible, and that  
12 takes time.

13 So we will put it down for Friday, June the 13th,  
14 at two-thirty o'clock, and we will be in Room 518.

15 THE DEFENDANT: Could you change that, your Honor?  
16 That's Friday, the 13th. I would like to have all the odds  
17 in my favor.

18 THE COURT: All right. How about the 20th? Friday,  
19 June the 20th, in Room 518.

20 What is Mr. Evans' bail status?

21 MR. HOSKINS: An unsecured personal recognizance  
22 bond, \$5,000. We have no objection to it being continued.

23 THE COURT: All right. I will continue Mr. Evans'  
24 bail status as before, and I hope, Mr. Evans, that you make  
25 progress towards better health.

1 MP

11[a]

2 THE DEFENDANT: Thank you very much. You have been  
3 very kind.

4 THE COURT: Thank you, Mrs. Evans, for coming.

5 Mr. Clerk, suppose we take a few minutes' recess,  
6 and then we will resume with the case on trial.

7 (Adjourned, for sentence, to June 20, 1975, at  
8 2:30 p.m.)

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MINUTES OF JUNE 19, 1975

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA, :  
:   
vs. :   
:   
FRANK EVANS, a/k/a :   
FREDERICK PASERA :   
:   
Defendant. :   
-----x

75 Cr. 176  
75 Cr. 562

BEFORE: Hon. INZER B. WYATT, D. J.

June 19, 1975  
4:30 P. M. - Room 518

APPEARANCES:

PAUL J. CURRAN, ESQ.,  
United States Attorney for the  
Southern District of New York

BY: RICHARD J. HOSKINS, ESQ.,  
Assistant United States Attorney.

ALVAN GELLER, ESQ.,  
For the defendant.



1  
2 THE COURT: We have a superseding indictment and  
3 we are to take the plea of the defendant to the superseding  
4 indictment. All right, Mr. Clerk.

5 MR. GELLER: Your Honor, with all due respect I do  
6 have an application before we enter a plea to the superseding  
7 indictment. I would respectfully ask your Honor to direct  
8 that the superseding indictment which specifies a different  
9 crime, that this indictment be referred back to Part 1 where  
10 it be placed back in the wheel for reassignment. I don't  
11 mean to infer anything about your Honor, but Mr. Evans did  
12 enter a guilty plea before your Honor where he substantially  
13 answered all your Honor's questions and indicated all the  
14 acts he has committed. Mr. Evans has asked me to make this  
15 application, your Honor. We do intend to litigate this  
16 case, Judge, in view of certain cases that have been started  
17 in the Second Circuit and I would respectfully ask your  
18 Honor to return this case to Part 1 where it can be re-  
19 assigned.

20 THE COURT: Oh, no. I certainly will not do that.  
21 It was assigned to me originally, I believe from Part 1,  
22 wasn't it, by lot?

23 MR. HOSKINS: Yes, your Honor.

24 MR. GELLER: The other indictment was.

25 THE COURT: Yes, but this is a superseding indict-

1 rgcg

2 ment and the only reason the government asked for a super-  
3 seding indictment is because when Mr. Evans pleaded guilty  
4 he denied that he knew that the American Express Travelers  
5 Checks had been stolen from a bank and then apparently a  
6 study of the relevant statute under which the old indictment  
7 was laid required the government to prove knowledge on the  
8 part of the defendant that the Travelers Checks had been  
9 stolen from a bank and Mr. Evans' answers to my questions  
10 denied that he knew that the Travelers Checks had in fact  
11 been stolen from a bank.

12 MR. GELLER: That is correct, your Honor.

13 THE COURT: So on the assumption that Mr. Evans,  
14 having pleaded guilty to all of the essential elements except  
15 knowledge of the theft from a bank, I suppose will plead  
16 guilty to the indictment, the superseding indictment. The  
17 government laid the superseding indictment under a statute  
18 which eliminated that element of the offense.

19 MR. GELLER: It did, your Honor.

20 THE COURT: So there is no basis on which I could  
21 conscientiously and responsibly return the case to Part 1.  
22 Obviously if Mr. Evans wants a trial he can have one.

23 MR. GELLER: Well, your Honor, that is basically  
24 Mr. Evans' position. He would prefer a trial before a judge  
25 who had not heard him enter a plea of guilty.



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THE COURT: Isn't it a jury case?

MR. GELLER: Well, now it may well be a jury case, your Honor.

THE COURT: Of course. So therefore I won't decide the question of the guilt or innocence of the defendant.

MR. GELLER: He feels his actions are limited. He would have the option of waiving a jury, but as your Honor has indicated he did plead guilty before your Honor and to a certain degree, your Honor, he feels it would be difficult to get a fair trial before your Honor having admitted basically all the elements of the charge.

THE COURT: I haven't the slightest idea of sending it back to Part 1 so the application is denied.

Now, Mr. Clerk, will you take the defendant's plea to indictment 75 Cr. 562.

THE CLERK: Are you Frank Evans?

THE DEFENDANT: Yes.

THE CLERK: On indictment number 75 Criminal 562, filed June 9, 1975, how do you plead to this indictment, guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: All right, which of these indictments does the government propose to try?

MR. HOSKINS: The superseding indictment, 75 Cr. 562,

1 rgeg

2 your Honor.

3 MR. GELLER: Your Honor, may the defendant be  
4 advised of the government's position regarding the prior  
5 indictment?

6 THE COURT: No, that's of no consequence to the  
7 defendant.

8 MR. GELLER: It is, your Honor, at least in our  
9 opinion because we feel it raises very serious problems along  
10 the lines of double jeopardy.

11 THE COURT: He has never been tried on the first  
12 indictment.

13 MR. GELLER: Well, your Honor, he has plead guilty  
14 and he has indicated all the factual obligations to make out  
15 a conviction. I am not making this up, Judge, to create  
16 problems for the court or for the government, but there are  
17 cases in this circuit, Judge, that have dealt with this very  
18 issue where a man pleads guilty and then a conviction is  
19 vacated and he is charged with another indictment alleging  
20 the same acts and at least one Second Circuit case, your  
21 Honor, has precluded that.

22 THE COURT: If you can show me the case -- what is  
23 the name of it?

24 MR. GELLER: I will show your Honor that case.  
25 Excuse me, Judge.



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THE DEFENDANT: Could I be seated, your Honor?

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THE COURT: Yes, your may.

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MR. HOSKINS: Your Honor, while he is doing that, just to make the record clear there has been no conviction entered as a result of his earlier attempted plea, of course.

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THE COURT: Of course.

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MR. GELLER: Your Honor, the name of that case is United States of America against Dominick Sabella and that case, your Honor, is reported at 272 Federal Reporter Second Series at page.206.

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THE COURT: Do you have a copy of it there?

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MR. GELLER: Certainly.

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THE COURT: This obviously in my view does not apply. Here the defendant had not only pleaded guilty, but had been sentenced, a judgment of conviction had been entered when he was sentenced and he had served part of the sentence of imprisonment, so as Judge Friendly remarks, "There is some degree of unreality in a claim that a convicted defendant who has been in jail has not been in jeopardy."

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Mr. Evans has not been convicted, he has not been sentenced, no judgment of conviction has been entered, he has never served any part of a sentence and I don't think that his is any precedent and I don't think, as I said before, the defendant has interest in the government's position in

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2 the old indictment. The government says it wants to try the  
3 superseding indictment and that's what we will be trying.

4 MR. GELLER: Your Honor, with due respect to the  
5 Court I would like you to just hear me for a moment.  
6 Later on in the opinion, Judge, the Court deals with the  
7 very specific issue of whether or not it is crucial for a  
8 sentence to be imposed with double jeopardy to apply and the  
9 Court quotes the entire history of this issue from Blackstone  
10 to Cook and the Court states specifically later on in the  
11 opinion, which I don't think your Honor got to, that it is  
12 not critical that the sentence be imposed.

13 THE COURT: All right, let me go ahead and finish  
14 it.

15 I have finished reading this opinion and I am not  
16 persuaded that it has any application to the situation here.

17 MR. GELLER: Your Honor, as my final request in  
18 regard to this matter would you allow me to submit a detailed  
19 brief, your Honor? This is the pleading stage. Hopefully I  
20 would hope your Honor would agree that my motion is not  
21 frivolous and I would like to submit a well prepared detailed  
22 brief to your Honor and hopefully I can --

23 THE COURT: I can't take the motion very seriously,  
24 but if you want to go to the trouble of submitting a brief I  
25 will certainly consider it. I can't ever close my mind.



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2 I could be persuaded, but it would be an intollerable situa-  
3 tion in the administration of justice if such a motion could  
4 lie. It would be utterly intollerable.

2 5 MR. GELLER: Not to argue with your Honor, that  
6 motion in Arbella --

7 THE COURT: No, there was not. There was a  
8 judgment of conviction and here I have not only never entered  
9 a judgment of conviction, but the plea of guilty in the first  
10 indictment is hereby set aside and on the first indictment the  
11 clerk is directed to enter a plea of not guilty.

12 MR. GELLER: I respectfully would suggest to your  
13 Honor that double jeopardy would attach.

14 THE COURT: You can argue it in the Court of  
15 Appeals if there is a conviction. I don't know that there  
16 will be a conviction, but if so it would be a wonderful  
17 point for the Court of Appeals.

18 Now, we will start in this room at 9:30 a. m.  
19 on August 12 and we will have our trial. All right, anything  
20 else?

21 MR. HOSKINS: Nothing, your Honor.

22 THE COURT: All right, I believe, Mr. Clerk, we  
23 are in this room?

24 THE CLERK: Yes.

25 MR. GELLER: At the risk, Judge, of incurring your



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Honor's rath, is it possible to make it the 13th or is that--

THE COURT: I may not have indicated to you, but I indicated to all generally within the hearing that we are very hard pressed and I have got to finish this case so that I can start another one.

MR. GELLER: Would your Honor allow me to appear at 10:15 on the 12th?

THE COURT: All right, let's make it 10:15 on August 12 and we are here, aren't we?

THE CLERK: Yes.

THE COURT: How long will it take to try the case?

MR. GELLER: I don't think more than a day, your Honor, a day and a half tops.

MR. HOSKINS: It seems to me two days is being relatively safe.

THE COURT: I appreciate it because I will note in my diary that the estimate is two days.

MR. GELLER: Thank you.

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MINUTES OF AUGUST 11, 1975



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

vs.

FRANK EVANS, a/k/a  
"Frederick Paseka"

Defendant.

75 Cr. 562

-----X

New York, New York.  
August 11, 1975 - 10:15 A.M.

Before:

HONORABLE INZER B. WYATT, District Judge.

APPEARANCES:

PAUL J. CURRAN, United States Attorney, for  
the Southern District of New York.

By: RICHARD J. HOSKINS, Assistant United States  
Attorney.

ALVIN GELLER, ESQ.,  
Attorney for the defendant.

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THE COURT: Now perhaps the first thing we better do is to deal with the question of the motion to dismiss the indictments.

Such a motion for the defendant was filed on July 23, and both sides have submitted memoranda of law. The Government's memorandum reached me about an hour ago, but I have studied it, considered it and considered the memorandum for the defendant also.

Does the defendant's counsel want to say anything more about the motion?

MR. GELLER: No, your Honor. I think our papers fully present our position.

THE COURT: And they are carefully done, but I adhere to the views that I have earlier expressed. There would seem to be no basis in any event for dismissing the first indictment. There is nothing double about it. In fact, the defendant pleaded guilty to that indictment and it was only my own action in setting aside his plea of guilty that prevented further proceedings on the basis of the guilty plea, and of course the second indictment I don't feel raises any double jeopardy problem.

Consequently, the motions will be denied and I will endorse the ruling on the notice of motion.

MR. HOSKINS: Your Honor, while you are doing

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2 that may I hand up a signed order of nolle prosequi with  
3 respect to the original indictment, 75 CR 176, as I mentioned  
4 that I would in my papers.

5 THE COURT: All right. I have endorsed the  
6 notice of motion, the within motion is denied, so ordered,  
7 and I have signed it and dated it today.

8 Well, I am not quite sure that this is an  
9 accurate statement, that the second indictment contains all  
10 the charges against Frank Evans included in the first  
11 indictment.

12 Well, I guess that is an accurate statement.

13 MR. HOSKINS: Factually, right, even though the  
14 statutes are different. The factual charges are what is  
15 intended to be said at least by that statement, even if  
16 not very well, is that the facts underlying both indictments  
17 are precisely the same.

18 THE COURT: Except that it would be necessary  
19 under the statute on which the first indictment was based  
20 to prove knowledge about Evans of the theft of the checks  
21 from a bank.

22 MR. HOSKINS: That is true.

23 THE COURT: And that is not part of the charge  
24 in the second indictment, but we all understand that.

25 I will permit the nolle prosequi to be filed.



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2 Mr. Clerk, on the nolle prosequi, the first  
3 indictment, I have endorsed, and I will give you that.

4 Now, Mr. Evans is not here today?

5 MR. GELLER: He is not, your Honor.

6 THE COURT: Well, doesn't that raise the question  
7 of whether I shouldn't issue a bench warrant and have him  
8 brought in?

9 MR. GELLER: I would ask that your Honor hear  
10 me very briefly on this.

11 THE COURT: Yes.

12 MR. GELLER: I know your Honor is familiar with  
13 Mr. Evans' medical background. It has been brought to  
14 your Honor's attention.

15 THE COURT: Yes, and I think he has always  
16 greatly exaggerated it. He claims that diverticulosis  
17 is a serious, grievous illness. It is no such thing.

18 MR. GELLER: I am certainly not prepared to  
19 debate that with your Honor, but I would suggest that I  
20 have seen Mr. Evans. His weight is now -- it may not be a  
21 serious illness, your Honor, but it has resulted in him  
22 virtually shrinking from 170 pounds to a present weight of  
23 130 pounds, so the illness may not be fatal, Judge, but it  
24 has had a severe impact on his life.

25 Your Honor, to complicate his other problems,



1 he came down with a case of hepatitis and he was hospitalized  
2 in Columbia-Presbyterian Hospital for one week in approx-  
3 imately the middle of July. I contacted his physician,  
4 Dr. Sweeting, who did indicate to me that it was hepatitis,  
5 and Mr. Evans -- he suggests most respectfully that Mr.  
6 Evans be allowed -- it is contagious hepatitis as well,  
7 and that Mr. Evans be allowed to recuperate for a period  
8 of four to six weeks.

9  
10 Frankly, your Honor, Mr. Evans is home in bed  
11 today. I spoke to him on Friday. I felt he shouldn't be  
12 here, Judge, just for the sake of all of us. The disease  
13 is communicable and I don't think we should subject ourselves  
14 to catching hepatitis and I would ask your Honor, because  
15 of the recent illness, not to issue a bench warrant.

16 He has come to court in the past and he is at  
17 home and that can be verified by a phone call.

18 THE COURT: Well, there is nothing in the basis  
19 of the doctor's certificate on which I could find that this  
20 hepatitis would endanger the Court, the witnesses, counsel  
21 or anything about it. He is not in the hospital at the  
22 present time. There is no showing by this certificate  
23 that he is not able to attend the trial. Even a defendant  
24 in good health doesn't enjoy -- it is not beneficial to the  
25 health of any criminal defendant to stand trial, no matter

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in what condition of health he is, no matter how robust..  
If he has high blood pressure, it is very apt to increase  
his blood pressure. If he has low blood pressure, it is  
very apt to make it go higher, simply because that is the  
nature of the trial process and I think that it is the duty  
of the Court to see that it is not imposed upon by a  
malingerer, and I suspect that this man is a malingerer.

Now, I would like to proceed with some  
evidence before me on which I could act, but I don't have  
anything at the moment and, therefore, I don't see anything  
except to have him brought in.

If he is brought in on a bench warrant, he  
is lodged in the Federal House of Detention and medical  
attention is available and we can get a prompt report.

MR. GELLER: Your Honor, there is no need for  
that. If your Honor directs Mr. Evans to be here, I will  
make a phone call and he will take a cab and be before your  
Honor within two hours.

Judge, perhaps I don't have your Honor's insight  
and not having had your Honor's experience, but the man  
does have hepatitis and that is a fact, and he was in the  
hospital for a week and I think when you combine the  
hepatitis with the other ailment, and the weight loss, I  
think in this particular incident, Judge, I don't think he



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2 got hepatitis in order to avoid litigating this case and  
3 I don't think he is malingering.

4 But if your Honor directs him and feels that  
5 he should be here, I would ask your Honor not to issue a  
6 warrant, I can certainly make a phone call and have him  
7 here whenever your Honor wishes.

8 There is one other aspect which may relate to  
9 this discussion, if your Honor will bear with me for one  
10 moment.

11 Your Honor, my understanding of the law in this  
12 Circuit is that on the issue of double jeopardy, a defendant  
13 may take a direct appeal to the Circuit Court of Appeals  
14 from an order denying the motion to dismiss.

15 I had discussed this with your Honor's law clerk  
16 earlier last week and I frankly would like to take advantage  
17 of that.

18 THE COURT: Well, I certainly will put no obstacle  
19 in that path, but I certainly will not delay the trial  
20 for the results of that appeal. The trial will go for-  
21 ward. The appeal wouldn't affect that date of trial.

22 MR. GELLER: Well, perhaps I read the decision  
23 wrong. I thought the Beckerman decision dealt with that  
24 and held that if an appeal is permitted, that that should  
25 delay the trial. That would be the purpose of allowing the



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2 appeal, to avoid the necessity of a trial.

3 THE COURT: How do you mean, allowing the  
4 appeal?

5 MR. GELLER: Well, the purpose, I think the  
6 Court discussed, your Honor, that avoiding -- the reason  
7 they allow a direct appeal on double jeopardy is to prevent  
8 the trial from occurring, prevent placing the defendant in  
9 a position where he goes to trial, that that is the very  
10 reason why they permit the appeal to be filed directly  
11 and I think it would defeat --

12 THE COURT: Do you need any permission from me  
13 to appeal to the Court of Appeals?

14 MR. GELLER: I do not, your Honor, but I  
15 want to be open.

16 THE COURT: So, what you are suggesting is that  
17 since it is your intention to appeal to the Court of Appeals,  
18 I should delay the trial on that account.

19 MR. GELLER: Yes, your Honor.

20 THE COURT: Well, that I won't accept. I under-  
21 stand the reason for your making the suggestion and it is  
22 perfectly lawyer-like, but I won't accept it, I won't  
23 adjourn the trial on that account.

24 Now, what does the Government think about proceed-  
25 ing? I want to start this trial tomorrow morning?

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2 I want to start it at 9:30 and I want to have a jury panel  
3 here and I want to go ahead and complete it.

4 MR. HOSKINS: Well, your Honoe, one idea which I  
5 didn't discuss with your law clerk was the possibility of  
6 having the defendant examined by a doctor appointed by  
7 the Government, and I have made some headway in that direc-  
8 tion.

9 I have the names of four doctors who would be  
10 qualified to examine a person with the problems Mr. Evans  
11 thinks he has. I have talked to two of those doctors.  
12 The problem is the speed with which we need the examination  
13 to be done. One of the doctors, the second one I spoke  
14 to, his secretary said he may be able to do it today, but  
15 he won't be in for a while.

16 The third and fourth doctors I have not had a  
17 chance to call. I would suggest it may be a good idea to  
18 try to give me a chance to have the man examined today  
19 or at the latest tomorrow morning, so we can get a  
20 solution to the medical problem if there is a medical problem.

21 THE COURT: Well, if Mr. Evans can get in a  
22 taxi and come down here, he can certainly go to a doctor's  
23 office.

24 MR. HOSKINS: I assume.

25 MR. GELLER: Whatever doctor the Government



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2 suggests, I will direct Mr. Evans to immediately get into  
3 a cab and go there and be examined.

4 THE COURT: Well, how quickly can you find out  
5 when one of these doctors can examine and give us the report.

6 MR. HOSKINS: Well, I am at the mercy of the doc-  
7 tors, but I assume based on past experience that I should be  
8 able to get a doctor who can do that within 30 minutes to  
9 an hour of going back to my desk and going back to the office  
10 and getting on the phone.

11 THE COURT: Can you use the clerk's telephone?

12 MR. HOSKINS: Yes, I have the numbers with me. I  
13 I run through the four and can't get them -- well, I can  
14 do that, yes.

15 THE COURT: Because we will need a report today.  
16 I mean if counsel is going to try the case tomorrow morning,  
17 counsel ought to know it and be getting ready for opening  
18 statements and so forth.

19 Well, suppose we wait for a few minutes and  
20 you do the best you can and let me know.

21 MR. HOSKINS: I will.

22 THE COURT: The object is to have a doctor  
23 examine Evans as promptly as possible this morning and give  
24 us an oral report -- it doesn't have to be in writing today -  
25 as to whether this man can attend the trial that is expected

to take two days -- isn't it?

MR. GELLER: Yes, your Honor.

THE COURT: Tomorrow and the next day, and that is it, an also, in view of what counsel has told us, quite properly, and also would it endanger the health of the jurors, the Court, the clerks, counsel, witnesses, if he is attending the trial, in his present condition, because he might infect everybody in the courtroom with hepatitis.

MR. HOSKINS: Right. I will do that.

THE COURT: I am an ignoramus on medical matters, but I never realized that hepatitis could be carried through the air. I thought it was something that came from an infection of the blood.

MR. GELLER: I spoke to several nurses at New York Hospital, your Honor, and people in -- my neighbors who are physicians, and it is communicable, through touching, through various means other than through the blood.

THE COURT: Well, through touching, yes, but I can tell him not to touch anybody, but could it be just breathing the air in this courtroom?

MR. GELLER: My impression is it can be.

THE COURT: You may be right. I am not --

MR. HOSKINS: Your Honor, the risk, I think --  
I don't know much about hepatitis. I think I did hear



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2 once that it could be communicated by touching an object  
3 which was touched by the person who had hepatitis within  
4 a reasonably short period after he touched it, so it could  
5 be by touching, but I don't know. That is something that  
6 I should find out from a doctor.

7 THE COURT: But unless something far graver and  
8 more serious is brought to my attention than has been laid  
9 before me so far, this trial is going to commence tomorrow  
10 ik this room at 9:30, and Mr. Evans will be here and if he  
11 is not here, he will be brought in on a bench warrant and  
12 kept in custody until the time it is completed.

13 These matters have got to be disposed of. I am  
14 under strict injunction by the Court of Appeals to get on  
15 with criminal matters and Mr. Evans' case means no more to  
16 me than any of 10 or 12 others, but they come to us nearly  
17 every week, and we have to dispose of them.

18 All right. I will wait here for a few minutes  
19 and see what you can do.

20 MR. HOSKINS: Thank you, your Honor.

21 (Recess.)

22 (11:20 A.M.)

23 THE COURT: Now what seems to be the situation?

24 MR. HOSKINS: Your Honor, I have an Arthur  
25 Dadirrian, at 15 Maiden Lane, who is prepared to examine

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Mr.Evans at 1:15 today.

THE COURT: All right. Is that his office address?

MR. HOSKINS: Yes. Room 408. It is between Broadway and Nassau and Maiden Lane.

THE COURT: All right. And he will be able to give you a report when?

MR. HOSKINS: Today.

THE COURT: And that would --

MR. HOSKINS: He said he would call your Honor's chambers, I gave him your number and mine, with an oral report today, and to be followed by a written report later.

THE COURT: Well, it may be that the best way to proceed would be to ask him if he would call my chambers and dictate to my secretary his report and then she can write it out and it can be made available to Mr. Geller and to you.

MR. HOSKINS: Fine.

MR. GELLER: Thank you, your Honor.

THE COURT: So, would you get that word to him?

MR. HOSKINS: Yes, I will.

THE COURT: I take it there is no problem about getting Mr.Evans to the doctor's office?

MR. GELLER: I anticipate no problems at all,



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your Honor. He is home and I will direct him to go and

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he will.

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Can I have this understanding, your Honor, that assuming that your Honor feels that, after listening to the report, that the trial should commence, that it will commence tomorrow morning?

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THE COURT: Yes.

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MR. HOSKINS: Your Honor, in that connection, if we get to that point I have one problem. I am supposed to argue an appeal in the Court of Appeals tomorrow morning. The calendar is called at 10:00. I don't know where I am on the calendar. Presumably I can contact them this afternoon and make sure my argument is put up first. But I do have that difficulty.

THE COURT: I don't suppose they have made up the calendar yet.

MR. HOSKINS: I don't believe they have. At least I haven't seen it. I can contact them and find out. But my understanding is if there is a trial on the same day that one has an argument, if you get to them soon enough at least they will put your argument up near the front.

THE COURT: That has been my usual experience. I have occasionally, myself, called Mr. Fusaro and he has always been able to do it, but I don't think it is necessary

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for me to do the telephoning.

MR. HOSKINS: No, I think I can do it.

THE COURT: If you like, you could express my desire that the case be put on first.

MR. HOSKINS: All right.

THE COURT: Mr. Clerk, we better not get the panel then, in any event, until we have gotten organized.

Do you think if you are put on first that you would be finished by 11:00 o'clock?

MR. HOSKINS: I believe so, your Honor, because they are calling the calendar tomorrow at 10:00 rather than 10:30, and that helps a little, so I think 11:00 would be possible.

THE COURT: And Mr. Geller, of course, I don't rule out the possibility that we may have to adjourn it because of this defendant's physical condition. I have an open mind. It is just suspicious, so to speak. Not only that, but also I feel keenly the pressures to dispose of criminal matters, but be that as it may, it is more convenient for you, if you have to come to trial tomorrow, if you don't have to get to this room until 11:00 o'clock, so that you don't waste your time.

MR. GELLER: I appreciate that.

Can I make one request in connection with the



doctor's report?

Your Honor asked for a report concerning whether this disease is contagious or whether it presents a threat to any of us. Can your Honor also ask this physician to state whether or not Mr. Evans in his present medical condition will fully be able to participate in a trial and what possible effects his condition would have on his ability to so take part in this trial.

THE COURT: Well, you are analogizing., to cases of mental competency under 4244, is it, of the Criminal Code or some such section, but I don't think that is appropriate as a standard for this type of situation. He is to give me a statement as to whether Mr. Evans can attend and participate in a two-day trial without serious danger to his health, without impairing his health seriously. Isn't that about it?

MR. GELLER: Yes, and I certainly would like that information and I am just asking your Honor additionally to have the doctor indicate, if he can give an opinion, as to whether he can participate in his present medical posture fully as say another individual who did not have hepatitis four weeks ago.

THE COURT: Well, we have got enough problems now.

I don't want to complicate it by restricting the doctor any more than I have already done.

Let's see what happens.

Assuming that we have a trial tomorrow, we will expect to start it in this room at 11:00 o'clock.

MR. GELLER: I will be here.

THE COURT: All right.

Anything else?

MR. HOSKINS: Nothing, your Honor. Thank you.

THE COURT: Thank you.

We will be in recess.

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